IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.732 OF 1999

IN

COMPANY APPEAL NO.8 OF 1998

IN

PETITION NO.14/111/CLB/WR/95

National Insurance Company Ltd. ...Appellant.

vs.

Glaxo India Ltd. ...Respondent.

Mr.D.V.Merchant i/b. Tejpal & co., for Appellant.

Mr.P.V.Samdhani i/b. M & M.Legal Venture, for Respondent.

CORAM: D.K.DESHMUKH &
J.H.BHATIA, JJ.

DATED: 3rd July,2007.

P.C.:-

1. This appeal is directed against the judgment of the learned Single Judge of this court in a Company Appeal no.8 of 1998. In that appeal, the order passed on 24.7.1998 by the Company Law Board, Western Region Bench, Bombay was challenged. The Company Law board had held that as the matter involves complicated questions, the dispute can not be resolved by the Company Law Board. The learned Single Judge held that the reasons given by the Company Law Board for not entertaining the petition that complicated questions are involved, is not correct. The learned Single Judge has observed that the dispute before the Company Law Board was "whether the appellants are the owners of the shares." The learned Single Judge has found that as the basic transaction of transfer of the

shares itself was disputed and there were allegations of forgery, relying on the judgment of the Supreme Court in the case of “Ammonia Supplies Corporation Pvt.Ltd. Vs. Modern Plastic Containers Pvt.Ltd. And others, (1994)79 Company Cases 163”, the learned Single Judge has held that as the basic transaction itself was disputed and the petition before the Company Law Board involved the question of deciding title, the Company Law Board could not have entertained the petition and it was the subject matter which could have been resolved only by the Civil Court. We find that the Division Bench of this Court in its judgment in the case of “Shirish Finance And Investment P.Ltd. Vs. M.Sreenivasulu Reddy and others, (2002)109 Company Cases 913” has taken the same view. The following observations of the Division Bench are relevant, they read as under:-

> “On a careful reading of the judgment of the Supreme Court, it is apparent that the court held that the jurisdiction exercised by the court

under section 155 is a summary jurisdiction. The company Court is invested with exclusive jurisdiction in regard to questions raised within the peripheral field of rectification. However, if the claim is based on some seriously disputed civil right or title, denial of any transaction or any other basic facts which may be the foundation to claim a right to be a member, and if the court feels such claim does not constitute to be a rectification but instead seeking adjudication of basic pillar, some such facts falling outside rectification, its discretion to send the party to seek its relief before a civil court first for the adjudication of such facts has not been taken away from the court. The court, therefore, has to find whether the dispute raised is really for rectification or is of such a nature, unless decided first, it would not come within the purview of rectification. It, therefore, follows that the company court, in its discretion, may refer the parties to a suit where the issues involved are

issues which cannot be appropriately dealt with in a summary jurisdiction. Where the application for rectification cannot be allowed without deciding other complicated questions of law and fact, or serious disputed questions of title, right, etc., are raised, the company court may direct the parties to get such matters decided by a court of competent civil jurisdiction. As we understand the judgment in Ammonia Supplies Corporation (P) Ltd., case, it only means this, that in an application for rectification under section 155, the company court would entertain and decide the application if the issues raised therein are such as can be decided by a court exercising summary jurisdiction. If, however, it is necessary before granting the application for rectification to decide other issues involving complicated questions of law and fact, and disputed questions of title, right, etc., then the company court may direct the parties to get their disputes adjudicated by a civil court. The exclusive jurisdiction under section

155 in confined only to those cases, where the court can appropriately in a summary jurisdiction decide the questions raised therein. It, therefore, follows that if an application for rectification does not raise any complicated questions of law or disputed question of title or any other such complicated issue which requires determination by a court of law, the applicant cannot seek relief by filing a civil suit because the questions that arise can be conveniently and appropriately dealt with by a court exercising summary jurisdiction. Thus, in every case, the court has to consider the facts and the issues involved and, thereafter exercise its discretion to grant relief or to relegate the parties to a suit in exercise of jurisdiction under section 155 of the Companies Act. We are, therefore, of the considered view that the decision in Ammonia Supplies Corporation Ltd. (1998) 94 Comp Cas 310 (SC), does not overrule the law as laid down in Public Passenger Services Ltd. (1966)36 Comp Cas 1 (SC), and cannot be

> cited as an authority for the proposition that the jurisdiction of the civil court is completely barred.
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> In Dr.V.L.Pahade V. Vinay L.Deshpande)1999)97 Comp Cas 889; (1999) SEBI 21, a Division Bench of the Andhra Pradesh High Court has taken a similar view after considering the judgment of the Supreme Court in Ammonia Supplies Corporation Ltd. (1998)94 Comp Cas 310. A learned judge of this court has also taken the same view in National Insurance Co.Ltd. Vs. Glaxo India Ltd. (1999) 98 Comp Cas 378 (Bom.)”

It is, thus, clear that not only the Division Bench has taken the same view as has been taken by the learned Single Judge but in the judgment the Division Bench has referred to the impugned order of the learned Single Judge. In this view of the matter therefore, we find that there is no substance in the appeal filed by the appellant. The appeal is disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA,J.)